

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte CARLO NERI and CARRADO CALLIEROTTI

Appeal 2007-0101
Application 09/692,025
Technology Center 1700

Decided: November 14, 2007

Before DONALD E. ADAMS, ERIC GRIMES, and
NANCY J. LINCK, *Administrative Patent Judges*.

GRIMES, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants have requested rehearing of the decision entered March 22, 2007 (hereafter “Decision”). The Decision affirmed rejections of claims 1-6, 8-14, and 18-21 for anticipation. We have considered Appellants’ arguments but decline to make any change in the previous decision. The request for rehearing is denied.

DISCUSSION

Appellants argue that the Decision erred in concluding that the evidence of record supports the Examiner’s position that the granules disclosed by Gäng, Deubel, and Yamauchi meet the limitations of instant

claim 1 even though they were made by a different process. (Req. Rhg. 1-4, 7-10). Appellants also argue that those skilled in the art would recognize the colophony in Deubel's composition to be a carrier and therefore the prior art composition is not "devoid of . . . carriers" as required by claim 1 (Req. Rhg. 4-6).

These arguments do not present any points that were misapprehended or overlooked in the Decision. *Cf.* 37 C.F.R. § 41.52(a)(1) ("The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board."). The Decision addressed the argument that the prior art granules are not the same as the claimed granules (Decision 12-13). Appellants have not pointed to any issues of fact or law that we misapprehended or overlooked in concluding that the prior art granules reasonably appear to meet all the limitations of claim 1. Nor have Appellants pointed to any evidence of record that rebuts that conclusion.

The Decision also addressed the argument that the colophony in Deubel's composition is a carrier (Decision 10-11). Again, Appellants have not pointed to any issues of fact or law that we misapprehended or overlooked. Appellants cite a chemical dictionary's definition of "carrier" (Req. Rhg. 6 n. 2), but provide no evidence that those skilled in the art would have considered the colophony in Deubel's composition to meet that definition. We note that, under Appellants' definition, a carrier is a "substance in appreciable amount" that carries "a trace of a specified substance . . . through a chemical or physical process," while Deubel's composition contains pigment and colophony in almost equal amounts (47 parts and 52 parts, respectively). Appellants' argument that the colophony

would be considered a carrier for the antioxidant is unsupported by evidence and therefore unpersuasive.

Appellants also argue that the Decision erred in characterizing the sodium hydroxide in Deubel's composition as a stabilizer (Req. Rhg. 3).¹ Appellants argue that, before the composition is dried into a granular material, "the solution is acidified by HCl to a pH of 4. At such pH, no sodium hydroxide is present. . . . Therefore, the factual basis for the asserted anticipation does not exist." (*Id.*)

Deubel's composition would anticipate claim 1 even if it contains no sodium hydroxide. As pointed out in our previous decision, Deubel's composition contains the antioxidant pentaerythrityl-tetrakis-[3-(3,5-ditert-butyl-4-hydroxy-phenyl)-propionate], and antioxidants are defined as stabilizers in the instant specification (Decision 10). Thus, even if we assume for the sake of argument that Deubel's final granular composition contains no sodium hydroxide, it still contains a stabilizer and therefore still anticipates.

¹ Appellants also argue that this rationale is "a new basis not identified by the Examiner" (Req. Rhg. 3) but the Examiner clearly pointed to the sodium hydroxide in Deubel's Example 1 as "read[ing] on applicants' claimed stabilizer component of claim 1" (Answer 8).

SUMMARY

Appellants have pointed to no issues of fact or law that we misapprehended or overlooked. We find it unnecessary to make any changes to our previous decision.

REHEARING DENIED

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